

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

DANIEL KLEEBERG, LISA STEIN, and  
AUDREY HAYS,

Plaintiffs,

v.

LESTER EBER; ALEXBAY, LLC f/k/a LESTER  
EBER, LLC; ESTATE OF ELLIOTT W.  
GUMAER, JR.; and WENDY EBER,

Defendants,

and

EBER BROS. & CO., INC.; EBER BROS. WINE  
AND LIQUOR CORP.; EBER BROS. WINE &  
LIQUOR METRO, INC.; EBER-  
CONNECTICUT, LLC; EBER-RHODE  
ISLAND, LLC; EBER BROS. ACQUISITION  
CORP.; EBER-METRO, LLC; SLOCUM &  
SONS OF MAINE, INC.; and CANANDAIGUA  
NATIONAL BANK & TRUST COMPANY,

Nominal Defendants.

Civil Action No. 16-CV-9517  
(LAK)(KAP)

**NOTICE OF MOTION TO EXCLUDE  
EVIDENCE AS SANCTIONS  
PURSUANT TO RULE 37**

PLEASE TAKE NOTICE that Plaintiffs, Daniel Kleeberg, Lisa Stein, and Audrey Hays, by and through their undersigned counsel, on September 14, at 9:30 a.m., or as soon thereafter as they may be heard, will move the Honorable Court of the Southern District of New York, for an order pursuant to Federal Rule of Civil Procedure 37, sanctioning Defendants Wendy Eber, Estate of Lester Eber, and Alexbay, LLC, and precluding Defendants from offering testimony or evidence from Michael Gallagher and precluding Defendants from offering documents produced less than two weeks before the beginning of the trial into evidence.

Dated: September 9, 2021

/s Brian C. Brook

Brian C. Brook (BB 1980)  
BROOK & ASSOCIATES, PLLC  
100 Church Street, Floor 8  
Telephone: (212) 257-2334  
Facsimile: (646) 257-2887  
Brian@brook-law.com

*Attorneys for Plaintiffs Daniel Kleeberg, Lisa Stein,  
and Audrey Hays*